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NO. 07-1153

IN THE SUPREME COURT OF THE UNITED STATES

VOTERS EDUCATION COMMITTEE, *ET AL.*,

Petitioners,

v.

THE WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION, *ET AL.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

The Attorney General of Washington, on behalf of the Washington State Public Disclosure Commission and the other respondents, respectfully requests that the Court deny the petition for a writ of certiorari in this case.

STATEMENT

In 2004 there was an election for all statewide offices in Washington State. There were competitive primary election contests for both the Republican and Democratic nominations for attorney general. There were two candidates seeking the Democratic nomination—Deborah Senn and Mark Sidran. Ms. Senn had held the elected office of State Insurance Commissioner from 1993 to 2001, but she did not hold public office while she was running for attorney general. The primary election was held on September 14, 2004.

1. The Advertisement

On September 1, 2004, the Voters Education Committee (Committee) began running a 30-second television advertisement entitled "Better" regarding Ms. Senn. The advertisement ran for eight days and was carried on three television stations in the Puget Sound area. It was also run in Yakima and Spokane in Eastern Washington.[1]

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[1] During this period, the Committee ran a second advertisement regarding Ms. Senn entitled "New." Neither the Public Disclosure Commission nor the Attorney General's Office relied upon "New" in the enforcement proceeding against the Committee.

The Committee was incorporated in Washington as a nonprofit, nonstock corporation. The Committee was also exempt from federal income tax as a § 527 corporation because it engaged in "the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office[.]" 26 U.S.C. § 527(e)(2). The Director of the Committee was Bruce Boram.

In the context of the campaign for attorney general, the Committee's advertisement did not discuss a legislative issue that was currently before the legislature or that was likely to be the subject of legislative scrutiny in the future. Rather, Mr. Boram described the advertisement as "criticizing Deborah Senn's tenure as the Washington State Insurance Commissioner . . . ." App. 2a ¶ 2. In the audio portion of the advertisement, the narrator asked: "Who is Deborah Senn looking out for?"[2] The narrator went on to explain that: "As Insurance Commissioner, Senn suspended most of a $700,000 fine against an Insurance company . . . in exchange for the company's agreement to pay for four new staff members in Senn's own office." The narrator stated that: "Senn even tried to cover up the deal from State Legislators" and that "The Seattle Post Intelligencer said Senn's actions '*easily could lead to conflict-of-interest abuses*'." The narrator concluded by telling viewers that: "Deborah Senn let us down." And, the narrator invited viewers to "log on to learn more."

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[2] The text of the advertisement is set out in the appendix at page 3a.

During the narration, the screen showed a photograph of Deborah Senn, with the background image of the Insurance Commissioner's Office. Superimposed on this image were the words: "Suspended $700,000 fine to get four new staff members in own office. *Seattle Times 2/20/97.*" The background image changed to the state legislature. The words over the new image stated: "Tried to Cover-Up Deal from State Legislature. *Seattle Time[sic] 2/20/97.*" The background image changed again to a *Seattle Post Intelligencer* Banner Head with the text "'easily could lead to conflict-of-interest abuses' *Seattle Post Intelligencer 2/27/97.*" At the end of the advertisement, there was a "White flash" and a web address: "www.senninsurancecrisis.com." The text concluded: "Paid for by Voters Education Committee."

Like the advertisement, and during the candidate campaign, the website did not discuss a current or future legislative issue. Rather, it discussed Ms. Senn's tenure as Insurance Commissioner.[3] The website had a photograph of Ms. Senn along with the headlines: "Deborah Senn: Insurance Commissioner 1993–2001" and "Deborah Senn's Policies Hurt the State." The text went on to explain that: "From 1993 until 2001, Deborah Senn was entrusted with protecting the insurance consumers of Washington State. On multiple occasions, her questionable judgment has cost the citizens of this state." The text accused Ms. Senn of adopting new rules that were so "poorly planned

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[3] The text of the website is set out in the appendix at page 4a-7a.

[that] thousands in our state lost the ability to purchase health insurance" and that it "took the legislature to clean up her mess, and bring health insurance choices back to the state." It stated that Ms. Senn's management of the agency "lead the National Association of Insurance Commissioners (NAIC) to consider revoking the state's accreditation." The website contained parts of articles from *National Underwriter Life & Health* and the *Insurance Journal* from December 1995 and January 2001, respectively, that were critical of Ms. Senn. The website also contained links to other articles.

2. Campaign Finance Disclosure Requirements In Washington

Congress prohibits corporations and labor unions from using funds in their treasuries to finance electioneering communications in elections for federal office. 2 U.S.C. § 441b. Washington law has no similar prohibition. However, Washington does impose campaign contribution limitations[4] and requires disclosure of contributions and expenditures. Wash. Rev. Code §§ 42.17.030–.135 implement the policy of the state that "political campaign . . . contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided." Wash. Rev. Code § 42.17.010(1) (2004); App. 8a.[5]

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[4] Wash. Rev. Code § 42.17.610, .640; App. 15a, 15a–20a.

[5] The campaign contribution limits set out in Washington's disclosure law were inspired, in part, "by the passage of the Federal Election Campaign Act of 1971" and the legislature deemed it "desirable to have implementing

The state's campaign finance law is administered by the Public Disclosure Commission (PDC). The PDC consists of five members "appointed by the governor, with the consent of the senate." Wash. Rev. Code § 42.17.350(1); App. 12a. The PDC has the authority to "(a) determine whether an actual violation of [the campaign finance law] has occurred; and (b) issue and enforce an appropriate order following such determination." Wash. Rev. Code § 42.17.395(1) (2004); App. 13a. In order to determine whether there has been an actual violation, the PDC is required to "hold a hearing pursuant to the Administrative Procedure Act[.]"[6] Wash. Rev. Code § 42.17.395(2) (2004); App. 14a. The PDC's orders finding a violation are subject to judicial review under the Administrative Procedure Act.[7] Wash. Rev. Code § 42.17.395(5) (2004); App. 14a–15a. If the PDC concludes that a person has violated the state's disclosure requirements, it may impose a civil penalty of up to $1,000 for a single violation and $2,500 if it finds multiple

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legislation at the state level." Wash. Rev. Code § 42.17.010(8) (2004); App. 8a. Disclosure of campaign contributions and expenditures also implement the policy that "the public's right to know of the financing of political campaigns . . . far outweighs any right that these matters remain secret and private." Wash. Rev. Code § 42.17.010(10) (2004); App. 8a.

[6] The Administrative Procedure Act provisions covering adjudicative proceedings are set forth in Wash. Rev. Code §§ 34.05.410–.494.

[7] The Administrative Procedure Act provisions covering judicial review of administrative adjudicative proceedings are set forth in Wash. Rev. Code §§ 34.05.510–.598.

violations. Wash. Rev. Code § 42.17.395(4) (2004); App. 14a. These penalties have increased since 2004

In lieu of holding a hearing to determine if there has been an actual violation, the PDC has the authority to "investigate and report apparent violations . . . to the appropriate law enforcement authorities[.]" Wash. Rev. Code § 42.17.360(5); Pet. 181a. This includes the authority to "refer the matter to the [state] attorney general[.]" Wash. Rev. Code § 42.17.395(3) (2004); App. 14a. If the attorney general brings an action to enforce the law, a court may impose "a civil penalty of not more than ten thousand dollars for each such violation." Wash. Rev. Code § 42.17.390(3) (2004); Pet. 185a–86a. The court may also "award to the state all costs of investigation and trial, including a reasonable attorney's fee[.]" Wash. Rev. Code § 42.17.400(5) (2004); Pet. 188a. If the court concludes that the violation is intentional, the "amount of the judgment, which shall for this purpose include the costs, may be trebled as punitive damages." Wash. Rev. Code § 42.17.400(5) (2004); Pet. 188a.

Under the disclosure law, every "political committee, within two weeks after its organization or, within two weeks after the date when it first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier, shall file a statement of organization with the [PDC]." Wash. Rev. Code § 42.17.040(1) (2004); Pet. 172a. The law defines "political committee" to mean

> "any person (except a candidate or an individual dealing with his or her own funds

> or property) having the expectation of receiving contributions or making expenditures in *support of, or opposition to, any candidate* or any ballot proposition." Wash. Rev. Code § 42.17.020(33) (2004) (emphasis added); Pet. 171a.

The term "candidate" means "any individual who seeks nomination for election or election to public office." Wash. Rev. Code § 42.17.020(8) (2004); App. 8a.

The statement of organization includes the name and address of the committee, the name and address of the committee's officers or responsible leader, the name and address of its treasurer and financial institution in which it deposits its funds, and the candidate or ballot proposition it is supporting or opposing. Wash. Rev. Code § 42.17.040(2)(a)–(g) (2004); Pet. 172a. Such a political committee is required to report all contributions[8] received and expenditures[9] made prior to the time it filed its statement of organization and periodically thereafter.

3. Proceedings Before The Public Disclosure Commission

The staff of the PDC became aware of the Committee's television advertisements on September 1, 2004, when they began airing. The staff conducted an investigation and concluded that the Committee

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[8] The definition of the term "contribution" is set out in Wash. Rev. Code § 42.17.020(14) (2004), App. 9a–11a.

[9] The definition of the term "expenditure" is set out in Wash. Rev. Code § 42.17.020(19) (2004), App. 12a.

should register and file reports. On September 7, 2004, the PDC staff faxed a letter to Mr. Boram directing him to register the Committee and file reports. The staff gave Mr. Boram until September 9, 2004, at noon, to comply. On the 9th, the PDC received a letter from the Committee's lawyer stating that the "Better" ad was an issue advertisement, and that the Committee's speech was protected by the First Amendment.

Since the primary election was set for September 14, 2004, the PDC held a special meeting on September 9, 2004. The Committee's lawyer participated by telephone. The staff presentation to the PDC stated that the "Better" ad constituted express advocacy in opposition to Ms. Senn's candidacy for the office of attorney general. After discussing the matter, the PDC unanimously determined that there was an apparent violation of the disclosure law and voted to refer the matter to the Attorney General's Office.

On September 10, 2004, following the initiation of an enforcement proceeding against it, the Committee decided to register with the PDC and disclose the contributions it received and the expenditures it made. When asked why he had decided to register, Mr. Boram told the press: "We just decided it was becoming a distraction to what we are trying to accomplish[.]"[10] On September 12, 2004, the Committee disclosed that it received two contributions. One was in the amount of 1.5 million

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[10] *Seattle Post Intelligencer* article, September 11, 2004, can be found at page 721 of the Washington Supreme Court Clerk's Papers.

dollars from the United States Chamber of Commerce. The other was in the amount of $25 from an anonymous donor.[11] On September 13, 2004, the Committee disclosed that it had made expenditures of $1,402,608.64. In addition, it had liabilities in the amount of $4,081.62.

4. Proceedings In The Trial Court

On September 10, 2004, the Attorney General's Office filed an action in Thurston County Superior Court seeking civil penalties and injunctive relief against the Committee. On the same day, the Committee filed an action in King County Superior Court (docket number 04-2-23551-1SEA) seeking declaratory and injunctive relief against the PDC, its members and Executive Director, and the Attorney General. The PDC's enforcement action was transferred to King County (docket number 04-2-33247-8SEA). The cases were assigned to the same judge, but they were not consolidated. Subsequently, Ms. Senn was permitted to intervene in the Committee's action (docket number 04-2-23551-1SEA). Ms. Senn was never a party to the PDC's enforcement action.

The Attorney General's Office moved for partial summary judgment in the enforcement case (docket number 04-2-33247-8SEA) and the Committee moved for summary judgment in its action (docket number 04-2-23551-1SEA). These motions were heard on the same day. The trial court

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[11] The identity of a person making an aggregate contribution of less than $25 need not be reported. Wash. Rev. Code § 42.17.090(1)(b) (2004); Pet. 178a.

ruled in favor of the PDC. The trial court entered separate judgments in the two cases. One granted the PDC's motion for partial summary judgment (docket number 04-2-33247-8SEA). The other denied the Committee's motion for summary judgment and dismissed the Committee's action (docket number 04-2-23551-1SEA). Pet. 56a. The Committee appealed the dismissal of its action to the Washington Supreme Court. The Attorney General's Office and the Committee agreed to stay the enforcement action (docket number 04-2-33247-8SEA) pending the outcome of the Committee's appeal.

5. The Washington Supreme Court's Decision

The Washington Supreme Court affirmed the trial court in a seven to two decision. There were four main points in the court's analysis. First, since the disclosure statute imposed a restriction on political speech, the court began by considering the appropriate level of scrutiny. Since the Committee was challenging a disclosure statute, the court did not apply strict scrutiny. Relying on *Buckley v. Valeo*, 424 U.S. 1 (1976), the court stated that "disclosure regulations must survive 'exacting scrutiny' and that there must be a 'relevant correlation' or 'substantial relation' between the governmental interest and the information required to be disclosed." Pet. 11a–12a. According to the court, the "governmental interests sought to be vindicated by disclosure requirements, such as providing the electorate with information and deterring corruption and the appearance of corruption, are sufficiently important to outweigh the possibility of infringement." Pet. 12a (internal

quotation marks omitted). The court concluded that "disclosure requirements—certainly in most applications—appear to be the least restrictive means of curbing the evils of campaign ignorance and corruption." Pet. 12a.

Second, the court rejected the Committee's primary claim that the phrase "in support of, or opposition to, any candidate" in the definition of "political committee" was unconstitutionally vague. Pet. 19a. The court stated that a statute is "void for vagueness 'if it is framed in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application.'" Pet. 15a. The court held that the statute was not vague. The majority stated that "the phrase 'in support of, or opposition to, any candidate' . . . is significantly more precise than the phrase 'relative to a clearly identified candidate,' which the Court determined was vague in *Buckley*." Pet. 19a. The court also relied on *McConnell v. Federal Election Commission*, 540 U.S. 93 (2003). In *McConnell*, this Court held that the words "promote," "oppose," "attack," and "support" in the definition of "public communications" "provide explicit standards for those who apply them and give the person of ordinary intelligence a reasonable opportunity to know what is prohibited." Pet. 20a (quoting *McConnell*, 540 U.S. at 170 n.64).

Third, the court rejected the Committee's claim that the definition of "political committee" must be limited to a committee engaged in express advocacy containing so called "magic words." The court explained that *Buckley* held "that the phrase 'relative to' was vague in that it failed to clearly

mark the boundary between permissible and impermissible speech." Pet. 16a (internal quotation marks omitted). The majority explained that *Buckley* applied a narrowing construction to the statute so it applied "only to expenditures for communications that expressly advocated the election or defeat of a clearly identified candidate [and that *Buckley* provided examples] such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'" Pet. 16a. The Committee argued that express advocacy was limited exclusively to the words listed in *Buckley*. However, the majority explained that *McConnell* "rejected the argument that *Buckley* drew a constitutionally mandated line between express advocacy and so-called issue advocacy[.]" Pet. 17a. Thus, the narrow reading of the statute in *Buckley* did not "suggest[] that a statute that was neither vague nor overbroad would be required to toe the same express advocacy line." Pet. 18a.

Finally, the court held that the "'Better' advertisement was clearly in opposition to Senn's candidacy." Pet. 24a. In reaching this conclusion, the court contrasted "Better" with the advertisement at issue in *Washington State Republican Party v. Washington State Public Disclosure Commission*, 141 Wash. 2d 245, 4 P.3d 808 (2000) (*WSRP*). The court explained that *WSRP* dealt with an "advertisement list[ing] facts that indicated [Gary] Locke's position on fighting crime, such as voting 'no' on the 'Three Strikes, You're Out law.'" Pet. 16a. *WSRP* held that it would be unconstitutional to apply contribution limits to the ad. According to the majority: "We

determined that the Locke advertisement was issue advocacy because it attacked his stance on an issue rather than his character." Pet. 16a. In contrast, the court held that "Better" was not the type of advertisement that simply makes a neutral, factual assertion which could be viewed as supporting by some, but viewed as opposing by others, depending on the viewer's opinion of the neutral assertion. Pet. 24a. Unlike the example, "'Jones will cut hospital funding,' 'Better' expressly supplied viewers with a conclusion to be drawn from the advertisement—'Deborah Senn Let Us Down.'" Pet. 24a (citation omitted). The majority concluded that "[g]iven Senn's status—no longer incumbent insurance commissioner and currently a candidate for attorney general—the 'Better' advertisement was *clearly in opposition to Senn's candidacy*." Pet. 24a (emphasis added).[12]

Two Justices dissented from the court's decision. In the view of the dissent, "[c]ontent-based restrictions on speech are presumptively

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[12] In light of its conclusion that the definition of political committee was not vague, the court stated that it was not required to decide whether "Better" constituted express or issue advocacy and declined to reach the issue. Pet. 25a. However, the majority's holding that the advertisement was "clearly in opposition to Senn's candidacy" (Pet. 24a), is an unmistakable and implicit conclusion that the advertisement was the functional equivalent of express advocacy. *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 206 (2003); *Fed. Election Comm'n v. Wisconsin Right to Life, Inc.*, __ U.S. __, 127 S. Ct. 2652, 2667 (2007) (*WRTL II*).

unconstitutional and are thus subject to strict scrutiny." Pet. 37a. And, the dissent concluded that the "statute's 'support or oppose' language is not 'sharply drawn.'" Pet. 39a. The dissent criticized the court's reliance on *McConnell's* conclusion that the terms support and oppose were not vague. According to the dissent, "*McConnell* [*v. Fed. Election Comm'n*, 540 U.S. 93 (2003)] was referring only to *party speakers* (such as political party operatives), and not referring to the private, independent speech at issue here." Pet. 40a. Finally, the dissent relies on *Federal Election Commission v. Wisconsin Right to Life, Inc.*, __ U.S. __, 127 S. Ct. 2652 (2007) (*WRTL II*). According to the dissent, the "majority cannot point to a particular phrase in the disputed advertisements that is 'susceptible of *no reasonable interpretation* other than as an appeal to vote for or against a specific candidate' [under] *WRTL* II." Pet. 41a.

REASONS FOR DENYING THE WRIT

The Court should deny the writ. The phrase "support of, or opposition to, any candidate" in Washington's definition of political committee is clear and straightforward. By its terms, it applies to the full spectrum of express advocacy from so called "magic words" to issue ads that are the functional equivalent of express advocacy. It does not regulate or threaten to regulate genuine issue advocacy as the Committee asserts. Nor does the decision conflict with *Center for Individual Freedom v. Carmouche*, 449 F.3d 655, 663 (5th Cir. 2006), or *North Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 712–13 (4th Cir. 1999). These decisions involve statutes different from Washington's that included language,

in addition to support or oppose, that rendered them vague. For the same reason, and contrary to the Committee's claim, the decision below is not inconsistent with *Buckley*. The Committee's concern with the Washington Supreme Court's discussion of footnote 64 in *McConnell* is misplaced. *McConnell* and *Buckley* considered different statutory language. And, as the decision below recognizes, in no sense did *McConnell* overrule *Buckley*. Finally, the decision below presents no threat to freedom of speech, let alone one that is national in scope. At best, the decision below would be nonbinding precedent interpreting a statute that only used the words "support or oppose." It would have little value or no value in interpreting the numerous statutes cited by the Committee that involve other language.

1. The Committee's Claim That The Decision Below Would Require Disclosure With Respect to Issue Advertisement Is Unjustified

The theme underlying the Committee's petition and the submissions of the amici curiae is that an organization will be subject to Washington's disclosure requirements if it runs genuine issue advertisements. There is no basis for this claim. An issue advertisement might "influence" or "relate to" a candidate. However, Washington's definition of political committee does not use these vague terms. Consistent with the decision below, under Washington law, an advertisement that "supports or opposes" a candidate is one where it is clear that the advertisement is calling for a vote for or against the candidate. *WSRP*, 141 Wash. 2d at 267, 4 P.3d at

820. The support or oppose standard does not reach issue advertisements.

Consistent with the decision below, in *WSRP*, the court defined express advocacy and held that it would be unconstitutional to apply contribution limits to issue advertisement. *WSRP* dealt with two separate television advertisements run by the State Republican Party with regard to Gary Locke, a county elected official as well as a candidate for governor. The first advertisement discussed several of Locke's positions on criminal justice issues and concluded "Tell Gary Locke that's not what *we* call getting tough on crime. Tell Gary Locke that we deserve *better*." *WSRP*, 141 Wash. 2d at 252, 4 P.3d at 813.

In considering what constitutes express advocacy that may be regulated by the PDC, the *WSRP* explained that an advertisement was "express advocacy when it is susceptible of no other reasonable interpretation than as an exhortation to vote for or against a candidate." *WSRP*, 141 Wash. 2d at 267, 4 P.3d at 820. It must be "clear that the action [the speech] is calling for is the election or defeat of a candidate. If reasonable minds could differ as to whether the speech calls for a vote for or against a candidate, or calls for some other kind of action, the speech is not express advocacy." *Id.* Thus, the question with the first Locke advertisement was "whether it [was] susceptible only to an interpretation that it called for such a vote." *Id.* at 271, 4 P.3d at 823. The court held that the first Locke ad was an issue advertisement.

The Court held that the second Locke advertisement constituted express advocacy. The text of the second ad was the same as the first, except that it ended with: "And now he wants to be our governor? Gary Locke: another extreme liberal we just can't afford." *WSRP*, 141 Wash. 2d at 273, 4 P.3d at 823. The court did not look for so-called magic words. Rather, the court concluded that the second ad was express advocacy because the "language in the second ad is unmistakable and unambiguous in its meaning, and presents a clear plea for the listener to take action to defeat candidate Gary Locke. Reasonable minds could not differ as to whether the second ad calls for a vote against Locke." *Id.* at 273, 4 P.3d at 824 (citation omitted).

The Washington standard to distinguish express advocacy from issue advocacy is fully consistent with *McConnell* and *WRTL II*. In *McConnell*, the Court rejected the notion advocated by the Committee in this case that "the First Amendment erects a rigid barrier between express advocacy and so-called issue advocacy. That notion cannot be squared *with our longstanding recognition that the presence or absence of magic words cannot meaningfully distinguish electioneering speech from a true issue ad.*" *McConnell*, 540 U.S. at 193 (emphasis added). To distinguish between express and issue advocacy, *McConnell* introduced a new term—the functional equivalent of express advocacy.

McConnell considered section 203 of the Bipartisan Campaign Reform Act of 2002 (BCRA), which extended the ban on corporate and union expenditures for express advocacy, to all

electioneering communications. In considering the facial argument that this expansion violated the First Amendment, because it would ban corporations and unions from paying for issue advertisements, the Court explained that this "argument fails to the extent that the issue ads broadcast during the 30- and 60-day periods preceding federal primary and general elections *are the functional equivalent of express advocacy.*" *McConnell*, 540 U.S. at 206 (emphasis added). According to the Court, the "justifications for the regulation of express advocacy apply equally to ads aired during those periods if the ads are intended to influence the voters' decisions and have that effect." *Id.* *McConnell* did not precisely define what constituted the functional equivalent of express advocacy.

The *WRTL II* plurality opinion explained what constitutes the functional equivalent of express advocacy. "[A]n ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." *WRTL II*, 127 S. Ct. at 2667 (plurality opinion). This is an "objective [test], focusing on the substance of the communication rather than amorphous considerations of intent and effect." *Id.* at 2666. However, "[c]ourts need not ignore basic background information that may be necessary to put an ad in context—such as whether an ad describes a legislative issue that is either currently the subject of legislative scrutiny or likely to be the subject of such scrutiny in the near future." *Id.* at 2669 (internal quotation marks omitted).

The test for distinguishing between express and issue advocacy adopted by the Washington Supreme Court in *WSRP* does not conflict with the test articulated by the plurality opinion in *WRTL II*, and the decision below is consistent with that test. The Committee's "Better" advertisement is susceptible of no reasonable interpretation other than as an appeal to vote against Ms. Senn. As the decision below stated, "the 'Better' advertisement was clearly in opposition to Senn's candidacy." Pet. 24a.

2. There Is No Conflict Between The Decision Below And The Cases Cited By The Committee

The Committee claims that the decision below conflicts with two decisions of the federal court of appeals. There is no conflict because both decisions involve statutes that contain language in addition to the words "support" and "oppose" in Washington's law.[13] It was this additional language that the courts held to be vague.

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[13] The same is true of the loyalty oath cases cited by the Committee. It was language other than "support" or "oppose" that the Court held to be vague. *Cramp v. Bd. of Pub. Instruction of Orange County, Fla.*, 368 U.S. 278, 286 (1961) ("The provision is completely lacking in these or any other terms susceptible of objective measurement. Those who take this oath must swear, rather, that they have not in the unending past ever knowingly lent their 'aid,' or 'support,' or 'advice,' or 'counsel' or 'influence' to the Communist Party. What do these phrases mean?"); *Baggett v. Bullitt*, 377 U.S. 360, 367, 371 (1964) (There were two oaths considered in *Baggett*. The 1955 oath was vague because a "teacher must swear that he is not a subversive person: that he is not one who commits an act or who advises, teaches, abets or advocates by any means another person to commit or aid in the commission

In *Center for Individual Freedom v. Carmouche*, 449 F.3d 655, 663 (5th Cir. 2006), the definition of "expenditure" was "a purchase, payment, advance, deposit, or gift, of money or anything of value made for the purpose of supporting, opposing, *or otherwise influencing* the nomination or election of a person to public office." (Emphasis added.) The court's analysis focused solely on the word "influencing." The court explained that the "source of vagueness [in *Buckley*] was the 'for the purpose of influencing' language within the definition of expenditure[.]" *Id.* at 664. And the court concluded that since the statute linked "the disclosure requirements for expenditures made by independent individuals and groups to the same *'for the purpose of influencing'* language that the Court confronted and upheld in *Buckley*, we can likewise construe the CFDA in a way that saves it from constitutional infirmity." *Id.* (emphasis added).

Similarly, in *North Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 712–13 (4th Cir. 1999), the definition of "political committee" was "a combination of two or more individuals, or any person, committee, association, or organization, the primary or incidental purpose of which is to support or oppose any candidate or political party or *to influence or*

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of any act intended to overthrow or alter, or to assist the overthrow or alteration, of the constitutional form of government by revolution, force or violence." The 1931 oath was vague because it "exacts a promise that the affiant will, by precept and example, promote respect for the flag and the institutions of the United States and State of Washington. The range of activities which are or might be deemed inconsistent with the required promise is very wide indeed.").

attempt to influence the result of an election." (Emphasis added.) The crux of the plaintiff's concern in *Bartlett* was the "influence or attempt to influence" language. The plaintiff intended to run issue advertisements and was concerned that it would meet the definition of a "political committee" because "*issue advocacy may influence an election* even though it does not expressly advocate the election or defeat of a particular candidate or party." *Bartlett*, 168 F.3d at 708 (emphasis added). The court did not discuss or even hint that the support or oppose language was vague.[14]

3. The Decision Below Is Not Inconsistent With *Buckley*

The Committee also argues that the decision below is inconsistent with *Buckley*. According to the Committee, "'*[A]dvocating the election or defeat' of a candidate* is, if anything, a more precise test than the more subjective 'support or oppose' standard. Yet *Buckley* held the advocacy formulation to be vague . . . ." Pet. 14 (emphasis added) (alteration in

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[14] The same is true in *Anderson v. Spear*, 356 F.3d 651, 663–65 (6th Cir. 2004), a case the Committee cites but does not discuss. *Anderson* concerned a statute that established a 500-foot barrier around polling places in which electioneering was prohibited. The definition of electioneering included "the *displaying of signs, the distribution of campaign literature, cards, or handbills*, the soliciting of signatures to any petition, or the solicitation of votes for or against any candidate or question on the ballot in any manner, but shall not include exit polling." *Anderson*, 356 F.3d at 663. Again, the court did not discuss or question the support or oppose language. Rather, the court said that the statute was "vague, sweeping in, *inter alia*, 'the displaying of signs, the distribution of campaign literature, cards, or handbills. . . .'" *Id.* at 665.

original). This argument fails because *Buckley* did not find the language "advocating the election or defeat" of a candidate to be vague. Instead, *Buckley* focused on two other phrases that rendered the statute vague.

The first vague phrase was "relative to." According to the Court, the "key operative language of the provision limits 'any expenditure . . . *relative to*' a clearly identified candidate." *Buckley*, 424 U.S. at 41 (emphasis added). The Court explained that the "*use of so indefinite a phrase as 'relative to'* a candidate fails to clearly mark the boundary between permissible and impermissible speech, unless other portions of § 608(e)(1) make sufficiently explicit the range of expenditures covered by the limitation." *Id.* at 41–42 (emphasis added).

The second vague phrase was "for the purpose of . . . influencing." The Court explained that "'[c]ontributions' and 'expenditures' are defined in parallel provisions in terms of the use of money or other valuable assets *'for the purpose of . . . influencing'* the nomination or election of candidates for federal office. It is the ambiguity of this phrase that poses constitutional problems." *Buckley*, 424 U.S. at 77 (emphasis added) (footnote omitted). The Court concluded that "[a]lthough the phrase, 'for the purpose of . . . influencing' an election or nomination, differs from the [phrase 'relative to'] it shares the same potential for encompassing both issue discussion and advocacy of a political result." *Id.* at 79.

Thus, the decision below is not inconsistent with *Buckley*. The Washington definition of political committee is limited to "support of, or opposition to,

any candidate[.]" Wash. Rev. Code § 42.17.020(33) (2004), Pet. 171a. The definition does not use the vague phrases "relative to" and "for the purpose of influencing" that troubled the Court in *Buckley*.

4. The Discussion Of Footnote 64 In The Decision Below Does Not Merit The Court's Review

The Committee argues that the Court should grant the review because the Washington Supreme Court relied on footnote 64 in *McConnell* to support its conclusion that the terms support and oppose are not vague. According to the Committee this "would mean *McConnell* had, via footnote, overruled a holding of *Buckley*[.]" Pet. 16. There is no basis for this argument. *Buckley* dealt with the vague phrases "relative to" and "for the purpose of influencing." A holding in *McConnell* that the words "support" and "oppose" are not vague casts no shadow on *Buckley* at all. And the decision below does not hold otherwise. According to the Washington Supreme Court, the "trial court's implication that *McConnell* overturned *Buckley* and erased the distinction between express advocacy and issue advocacy does not accurately reflect the holding of *McConnell*." Pet. 25a. Rather, the majority explained that "*McConnell* did clarify that the distinction between express advocacy and issue advocacy articulated in *Buckley* was not constitutionally mandated but was instead a tool of statutory construction." Pet. 25a.

The Committee also argues that the words "support" and "oppose" are not vague in *McConnell* because the context is limited to political party speakers. Pet. 16–17. *McConnell* stated:

> "We likewise reject the argument that § 301(20)(A)(iii) is unconstitutionally vague. *The words* promote, *oppose,* attack, and *support clearly set forth the confines within which potential party speakers must act* in order to avoid triggering the provision. These words provide explicit standards for those who apply them and give the person of ordinary intelligence a reasonable opportunity to know what is prohibited." *McConnell,* 540 U.S. at 170 n.64 (emphasis added) (internal quotation marks omitted).

It is certainly true that the statute in *McConnell* was directed at party speakers. However, there is no indication that the words were clear only because party speakers are involved. Indeed, the next sentence indicates that this is not the case. *McConnell* went on to state: "*This is particularly the case here,* since actions taken by political parties are presumed to be in connection with election campaigns." *Id.* (emphasis added). The Court did not say that words were clear only because political parties are involved. Rather, the presence of party speakers was an additional reason why the language was not ambiguous.

In any event, this question is not ripe for review. The Committee points to no conflict concerning the meaning of footnote 64. Nor is the question of such significance that the Court should depart from its usual practice of letting questions percolate in the lower courts until a genuine conflict develops.

5. The Decision Below Poses No Threat To Free Speech, Let Alone A Nationwide Threat

The Committee concludes its petition by arguing that "the Washington court's ruling creates a nationwide threat to free speech." Pet. 19. This claim is surely overblown. The decision below holds that because the Committee broadcast an advertisement "clearly in opposition to Senn's candidacy" (Pet. 24a), it was required to register as a political committee under Washington's statute. Such a decision poses no threat to free speech. Moreover, unlike a decision of the federal court of appeals, the decision below is only binding precedent in Washington. It will have little relevance to statutes that, unlike the Washington statute, include other terms such as "relative to" and "for the purpose of influencing." As Appendix N to the petition makes clear, many states have language beyond the words support or oppose.[15] The decision below has little

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[15] *See, e.g.*, La. Rev. Stat. §§ 18:1501.1(A), 18:1483(9)(a) (requiring disclosure of persons "who make payments 'for the purpose of supporting, opposing, or otherwise influencing' an election") (Pet. 191a); Utah Code Ann. § 20A-11-101(26)(a), (31) ("political action committee" includes a group that makes expenditures that "tend to influence, directly or indirectly, any person to . . . vote for or against any candidate") (Pet. 194a); Wyo. Stat. Ann. § 22-1-102(a)(xx) ("political action committee" includes any group organized "for the purpose of raising, collecting, or spending money for use in the aid of, or otherwise influencing or attempting to influence, directly or indirectly, the election or defeat of candidates") (Pet. 195a).

relevance for those laws. Even where another jurisdiction's statute is limited to supporting or opposing a candidate, the decision below is merely nonbinding authority upon which another state court may or may not rely.

The exaggerated nature of the threat claimed by the Committee is also confirmed by the tepid amicus support for the petition. The presence of the Chamber as an amicus curiae does not demonstrate that this is a nationally important case. Given the Chamber's funding of the Committee's advertisement, its role in the underlying case and its funding of this litigation, it is more akin to a second brief filed by a party. *See* Chamber Br. 1 n.1. And while we do not dispute that the Center For Competitive Politics is interested in a more free and competitive electoral process (Center Br. 1), if the decision below were truly a nationwide threat to free speech, one would expect to see a host of amicus curiae briefs filed by organizations whose purpose is to defend the First Amendment.

There is nothing in this case that justifies the Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

RESPECTFULLY SUBMITTED.

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May 2, 2008

APPENDIX

Honorable Richard A. Jones
Hearing Date: December 3, 2004
Hearing Time: 8:30 a.m.
With Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

VOTERS EDUCATION COMMITTEE, a Washington nonprofit corporation; BRUCE BORAM, an individual; VALERIE HUNTSBERRY, an individual, Plaintiffs, vs. WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION; MICHAEL CONNELLY, JEANETTE WOOD, FRANCIS MARTIN, EARL TILLY, and JANE NOLAND, Commissioners of the Washington State Public Disclosure Commission in their individual capacities, VICKI RIPPIE, Executive Director of the Washington State Public Disclosure Commission, in her individual capacity, and CHRISTINE GREGOIRE, Attorney General, of the State of Washington in her individual capacity, Defendants, and DEBORAH SENN, Intervenor.	NO. 04-2-23551-1 SEA DECLARATION OF BRUCE BORAM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

BRUCE BORAM declares under penalty of perjury under the laws of the State of Washington as follows:

1. I am one of the plaintiffs in this case and am the Director of Voters Education Committee. I am competent to testify and make this declaration of my personal knowledge.

2. Attached hereto as *Exhibit A* are true and accurate copies of the text of the two television advertisements criticizing Deborah Senn's tenure as the Washington State Insurance Commissioner that Voters Education Committee aired between approximately September 1, 2004, and September 8, 2004.

3. Attached hereto as *Exhibit B* is a true and accurate copy of the www.senninsurance crisis.com web site home page. All of the links listed on the home page were to complete newspaper articles regarding Ms. Senn's tenure as Insurance Commissioner or the insurance crisis in Washington State.

SIGNED this *3* day of November, 2004 in Kirkland, Washington.

Bruce Boram

BRUCE BORAM

[page]

Exhibit A

[page]

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"Better – B" – 30 second TV

Video	Audio
Words on screen in special effect.	**Who is Deborah Senn looking out for?**
Photo of DS, background image of Insurance Commissioner Office. Words on screen: **Suspended $700,000 fine to get four new staff members in own office.** ***Seattle Times 2/20/97***	**As Insurance Commissioner, Senn suspended most of a $700,000 fine against an Insurance company . . . in exchange for the company's agreement to pay for four new staff members in Senn's own office.**
Background change to State Leg. Words on screen: **Tried to Cover-Up Deal from State Legislature.** ***Seattle Time[sic] 2/20/97***	**Senn even tried to cover up the deal from State Legislators.**
Newspaper background. SPI Banner Head. Pull quotes from article: **"easily could lead to conflict-of-interest abuses"** *Seattle Post Intelligencer 2/27/97*	**The Seattle Post Intelligencer said Senn's actions "*easily could lead to conflict-of-interest abuses*"**
White flash. Words on Screen: **www.senninsurance crisis.com**	**Deborah Senn let us down . . . log on to learn more.** ***B Boram***
Paid for by Voters Education Committee	

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Exhibit B

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2004 Status Update
Insurance
Crisis

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Home	Citizens Lose Options	Small Business Crisis

Deborah Senn: Insurance Commissioner 1993–2001

Deborah Senn's Policies Hurt the State

[photo of Deborah Senn]

From 1993 until 2001, Deborah Senn was Washington State. On multiple occasions, this state.

On entering the office she unilaterally the citizens. So poorly planned were these purchase health insurance. It took the insurance choices back to the state.

By 1999, Senn's management of the Commissioners (NAIC) to consider to withdraw from the organization. Democrat Senn's eight year reign. One of his top with the NAIC and repairing the political

entrusted with protecting the insurance consumers of her questionable judgment has cost the citizens of

enacted new insurance rules she claimed were to help rules that thousands in our state lost the ability to legislature to clean up her mess, and bring health

department lead the National Association of Insurance revoking the state's accreditation. Senn's response was Mike Kreidler was elected to the office following priorities was returning the state to good standing damage Senn had left behind.

Rate Increases:
Average Consumers Pay the Price For Senn's Rules

National Underwriter Life & Health-December 25, 1995

Several insurers said a three-month 'open enrollment' period in 1994, mandated by the now-defunct 1993 Health Services Act, burdened them with an influx of high-risk individuals with costly, pre-existing conditions. But Ms. Senn pointed to the repeal of community-based rating during the state's May 1995 legislative session for fueling rate increase requests from insurers for their individual policies.

'We are seeing the effects of the repeal of cost-containment

[page]

measurers. Some argued that the free market would take care of it, but it didn't,' Ms. Taylor-McGhee said.

More Articles . . .

1995: Health Services Act of 1993 Repealed

Washington Needs an Appointed Insurance Commissioner

Mandates Increase Costs and Reduce Access to Affordable Health Insurance

Washington State Insurance Commissioner Seeks to Resolve Past Political Bickering

Insurance Journal - January 16, 2001:

Newly elected Washington Insurance Commissioner Mike Kreidler wants to regain some powers stripped away by lawmakers peeved at predecessor Deborah Senn, Knight Ridder/Tribune Business News service has reported. Kreidler reportedly plans to also seek the re-accreditation of the office and expand availability of lower-cost drugs.

His predecessor, the controversial Senn, who lost a bid for the U.S. Senate in November, had alienated many legislators

[page]

during her eight years in office. The news service reported Kreidler expects to mend those relations over the next few months. Last year, lawmakers took away the insurance commissioner's power to regulate health insurance premiums, a direct slap at then-Commissioner Senn, according to a quote in the news service report that was attributed to Kreidler. And the commissioner's office can no longer conduct hearings using its own administrative law judges, he was reported as saying.

Read Full Article . . .

Wash. Rev. Code 42.17.010 Declaration of policy. It is hereby declared by the sovereign people to be the public policy of the state of Washington:

(1) That political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided.

. . . .

(8) That the concepts of disclosure and limitation of election campaign financing are established by the passage of the Federal Election Campaign Act of 1971 by the Congress of the United States, and in consequence thereof it is desirable to have implementing legislation at the state level.

. . . .

(10) That the public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private.

. . . .

Wash. Rev. Code 42.17.020 Definitions.

. . . .

(8) "Candidate" means any individual who seeks nomination for election or election to public office. An individual seeks nomination or election when he or she first:

(a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his or her candidacy for office;

(b) Announces publicly or files for office;

(c) Purchases commercial advertising space or broadcast time to promote his or her candidacy; or

(d) Gives his or her consent to another person to take on behalf of the individual any of the actions in (a) or (c) of this subsection.

. . . .

(14)(a) "Contribution" includes:

(i) A loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or anything of value, including personal and professional services for less than full consideration;

(ii) An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, or their agents;

(iii) The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising prepared by a candidate, a political committee, or its authorized agent;

(iv) Sums paid for tickets to fund-raising events such as dinners and parties, except for the actual cost of the consumables furnished at the event.

(b) "Contribution" does not include:

(i) Standard interest on money deposited in a political committee's account;

(ii) Ordinary home hospitality;

(iii) A contribution received by a candidate or political committee that is returned to the contributor within five business days of the date on which it is received by the candidate or political committee;

(iv) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is of primary interest to the general public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political committee;

(v) An internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(vi) The rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this section, means services or labor for which the individual is not compensated by any person;

(vii) Messages in the form of reader boards, banners, or yard or window signs displayed on a person's own property or property occupied by a person. However, a facility used for such political advertising for which a rental charge is normally made must be reported as an in-kind contribution and counts towards any applicable contribution limit of the person providing the facility;

(viii) Legal or accounting services rendered to or on behalf of:

(A) A political party or caucus political committee if the person paying for the services is the regular employer of the person rendering such services; or

(B) A candidate or an authorized committee if the person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of ensuring compliance with state election or public disclosure laws.

(c) Contributions other than money or its equivalent are deemed to have a monetary value equivalent to the fair market value of the contribution. Services or property or rights furnished at less than their fair market value for the purpose of assisting any candidate or political committee are deemed a contribution. Such a contribution must be reported as an in-kind contribution at its fair market value and counts towards any applicable contribution limit of the provider.

(19) "Expenditure" includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. The term "expenditure" also includes a promise to pay, a payment, or a transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefiting, or honoring any public official or candidate, or assisting in furthering or opposing any election campaign. For the purposes of this chapter, agreements to make expenditures, contracts, and promises to pay may be reported as estimated obligations until actual payment is made. The term "expenditure" shall not include the partial or complete repayment by a candidate or political committee of the principal of a loan, the receipt of which loan has been properly reported.

Wash. Rev. Code 42.17.350 Public disclosure commission—Established—Membership—Prohibited activities—Compensation, travel expenses. (1) There is hereby established a "public disclosure commission" which shall be composed of five members who shall be appointed by the governor, with the consent of the senate. All appointees shall be persons of the highest integrity and qualifications. No more than three members shall have an identification with the same political party.

(2) The term of each member shall be five years. No member is eligible for appointment to more than one full term. Any member may be

removed by the governor, but only upon grounds of neglect of duty or misconduct in office.

(3) During his or her tenure, a member of the commission is prohibited from engaging in any of the following activities, either within or outside the state of Washington:

(a) Holding or campaigning for elective office;

(b) Serving as an officer of any political party or political committee;

(c) Permitting his or her name to be used in support of or in opposition to a candidate or proposition;

(d) Soliciting or making contributions to a candidate or in support of or in opposition to any candidate or proposition;

(e) Participating in any way in any election campaign; or

(f) Lobbying, employing, or assisting a lobbyist, except that a member or the staff of the commission may lobby to the limited extent permitted by RCW 42.17.190 on matters directly affecting this chapter.

(4) A vacancy on the commission shall be filled within thirty days of the vacancy by the governor, with the consent of the senate, and the appointee shall serve for the remaining term of his or her predecessor. A vacancy shall not impair the powers of the remaining members to exercise all of the powers of the commission.

(5) Three members of the commission shall constitute a quorum. The commission shall elect its own chair and adopt its own rules of procedure in the manner provided in chapter 34.05 RCW.

(6) Members shall be compensated in accordance with RCW 43.03.250 and in addition shall be reimbursed for travel expenses incurred while engaged in the business of the commission as provided in RCW 43.03.050 and 43.03.060. The compensation provided pursuant to this section shall not be considered salary for purposes of the provisions of any retirement system created pursuant to the general laws of this state.

Wash. Rev. Code 42.17.395 Violations—Determination by commission—Procedure. (1) The commission may (a) determine whether an actual violation of this chapter has occurred; and (b) issue and enforce an appropriate order following such determination.

(2) The commission, in cases where it chooses to determine whether an actual violation of this chapter has occurred, shall hold a hearing pursuant to the Administrative Procedure Act, chapter 34.05 RCW, to make such determination. Any order that the commission issues under this section shall be pursuant to such hearing.

(3) In lieu of holding a hearing or issuing an order under this section, the commission may refer the matter to the attorney general or other enforcement agency as provided in RCW 42.17.360.

(4) The person against whom an order is directed under this section shall be designated as the

respondent. The order may require the respondent to cease and desist from the activity that constitutes a violation and in addition, or alternatively, may impose one or more of the remedies provided in *RCW 42.17.390(1) (b), (c), (d), or (e): PROVIDED, That no individual penalty assessed by the commission may exceed one thousand dollars, and in any case where multiple violations are involved in a single complaint or hearing, the maximum aggregate penalty may not exceed two thousand five hundred dollars.

(5) An order issued by the commission under this section shall be subject to judicial review under the Administrative Procedure Act, chapter 34.05 RCW. If the commission's order is not satisfied and no petition for review is filed within thirty days as provided in RCW 34.05.542, the commission may petition a court of competent jurisdiction of any county in which a petition for review could be filed under that section, for an order of enforcement. Proceedings in connection with the commission's petition shall be in accordance with RCW 42.17.397.

Wash. Rev. Code 42.17.610 Findings. The people of the state of Washington find and declare that:

(1) The financial strength of certain individuals or organizations should not permit them to exercise a disproportionate or controlling influence on the election of candidates.

(2) Rapidly increasing political campaign costs have led many candidates to raise larger percentages of money from special interests with a specific financial stake in matters before state

government. This has caused the public perception that decisions of elected officials are being improperly influenced by monetary contributions.

(3) Candidates are raising less money in small contributions from individuals and more money from special interests. This has created the public perception that individuals have an insignificant role to play in the political process.

Wash. Rev. Code 42.17.640 Limits specified—Exemptions. (1) No person, other than a bona fide political party or a caucus political committee, may make contributions to a candidate for a state legislative office that in the aggregate exceed *five hundred dollars or to a candidate for a state office other than a state legislative office that in the aggregate exceed *one thousand dollars for each election in which the candidate is on the ballot or appears as a write-in candidate. Contributions made with respect to a primary may not be made after the date of the primary. However, contributions to a candidate or a candidate's authorized committee may be made with respect to a primary until thirty days after the primary, subject to the following limitations: (a) The candidate lost the primary; (b) the candidate's authorized committee has insufficient funds to pay debts outstanding as of the date of the primary; and (c) the contributions may only be raised and spent to satisfy the outstanding debt. Contributions made with respect to a general election may not be made after the final day of the applicable election cycle.

(2) No person, other than a bona fide political party or a caucus political committee, may make

contributions to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the state official, during a recall campaign that in the aggregate exceed *five hundred dollars if for a state legislative office or *one thousand dollars if for a state office other than a state legislative office.

(3)(a) Notwithstanding subsection (1) of this section, no bona fide political party or caucus political committee may make contributions to a candidate during an election cycle that in the aggregate exceed (i) *fifty cents multiplied by the number of eligible registered voters in the jurisdiction from which the candidate is elected if the contributor is a caucus political committee or the governing body of a state organization, or (ii) *twenty-five cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected if the contributor is a county central committee or a legislative district committee.

(b) No candidate may accept contributions from a county central committee or a legislative district committee during an election cycle that when combined with contributions from other county central committees or legislative district committees would in the aggregate exceed *twenty-five cents times the number of registered voters in the jurisdiction from which the candidate is elected.

(4) (a) Notwithstanding subsection (2) of this section, no bona fide political party or caucus political committee may make contributions to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the state official, during a recall campaign that in the aggregate exceed (i) *fifty cents multiplied by the number of eligible registered voters in the jurisdiction entitled to recall the state official if the contributor is a caucus political committee or the governing body of a state organization, or (ii) *twenty-five cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected if the contributor is a county central committee or a legislative district committee.

(b) No state official against whom recall charges have been filed, no authorized committee of the official, and no political committee having the expectation of making expenditures in support of the recall of a state official may accept contributions from a county central committee or a legislative district committee during an election cycle that when combined with contributions from other county central committees or legislative district committees would in the aggregate exceed *twenty-five cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected.

(5) For purposes of determining contribution limits under subsections (3) and (4) of this section,

the number of eligible registered voters in a jurisdiction is the number at the time of the most recent general election in the jurisdiction.

(6) Notwithstanding subsections (1) through (4) of this section, no person other than an individual, bona fide political party, or caucus political committee may make contributions reportable under this chapter to a caucus political committee that in the aggregate exceed *five hundred dollars in a calendar year or to a bona fide political party that in the aggregate exceed *two thousand five hundred dollars in a calendar year. This subsection does not apply to loans made in the ordinary court of business.

(7) For the purposes of RCW 42.17.640 through 42.17.790, a contribution to the authorized political committee of a candidate, or of a state official against whom recall charges have been filed, is considered to be a contribution to the candidate or state official.

(8) A contribution received within the twelve-month period after a recall election concerning a state office is considered to be a contribution during that recall campaign if the contribution is used to pay a debt or obligation incurred to influence the outcome of that recall campaign.

(9) The contributions allowed by subsection (2) of this section are in addition to those allowed by subsection (1) of this section, and the contributions allowed by subsection (4) of this section are in addition to those allowed by subsection (3) of this section.

(10) RCW 42.17.640 through 42.17.790 apply to a special election conducted to fill a vacancy in a state office. However, the contributions made to a candidate or received by a candidate for a primary or special election conducted to fill such a vacancy shall not be counted toward any of the limitations that apply to the candidate or to contributions made to the candidate for any other primary or election.

(11) Notwithstanding the other subsections of this section, no corporation or business entity not doing business in Washington state, no labor union with fewer than ten members who reside in Washington state, and no political committee that has not received contributions of ten dollars or more from at least ten persons registered to vote in Washington state during the preceding one hundred eighty days may make contributions reportable under this chapter to a candidate, to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the official. This subsection does not apply to loans made in the ordinary course of business.

(12) Notwithstanding the other subsections of this section, no county central committee or legislative district committee may make contributions reportable under this chapter to a candidate, state official against whom recall charges have been filed, or political committee having the expectation of making expenditures in support of the recall of a state official if the county central committee or legislative district committee is outside of the jurisdiction entitled to elect the candidate or recall the state official.

(13) No person may accept contributions that exceed the contribution limitations provided in this section.

(14) The following contributions are exempt from the contribution limits of this section:

(a) An expenditure or contribution earmarked for voter registration, for absentee ballot information, for precinct caucuses, for get-out-the-vote campaigns, for precinct judges or inspectors, for sample ballots, or for ballot counting, all without promotion of or political advertising for individual candidates; or

(b) An expenditure by a political committee for its own internal organization or fund raising without direction association with individual candidates.